

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MICHAEL AND CAROL CONOVER)	
)	
COMPLAINANTS)	
)	
VS.)	CASE NO. 90-232
)	
INTER-COUNTY RURAL ELECTRIC COOPERATIVE)	
CORPORATION AND KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANTS)	

O R D E R

On February 27, 1991, Michael and Carol Conover ("Conovers") filed an Application for Rehearing of the Commission's February 6, 1991 Order dismissing their request for a modification of the certified electric territorial boundary affecting 95 acres near the southwest city limits of the city of Harrodsburg, Kentucky. The Conovers' original petition requested a modification of the certified electric territorial boundary to authorize Kentucky Utilities Company ("KU") to provide retail electric service to approximately 75 percent of the Conovers' 95-acre tract, except for Commerce Park II, which lies within Inter-County Rural Electric Cooperative's ("Inter-County") certified territory. On March 8, 1991, Inter-County filed a response in opposition to the Conovers' request for rehearing.

On rehearing, the Conovers claim that there is newly discovered evidence that the city of Harrodsburg has granted an

exclusive electric franchise to KU and that pursuant to the franchise and the Kentucky Constitution, Section 203, KU is required to provide electric service to the 95-acre tract. The Conovers do not state why this evidence could not, with reasonable diligence, have been offered prior to rehearing. However, even assuming that such evidence is newly discovered, the Commission has no jurisdiction to determine the rights or responsibilities that arise from the grant of a franchise by a municipality.

The Conovers also state that all of the proposed commercial park described in their original Petition is within the city limits of Harrodsburg and, as a consequence, is subject to Harrodsburg's franchise authority under the Kentucky Constitution, Sections 163 and 164. Any redress of this claim must be pursued in the Court of Justice, not the Commission.

The Petition for Rehearing further argues that since Exhibit B to the Petition discloses the existence of a proposed restaurant to be located on a site that is partially in Inter-County's service territory and partially in KU's, this demonstrates that there is a new electric-consuming facility located in two adjacent certified territories. This argument was addressed and rejected by the Commission in the February 6, 1991 Order. The statutory definition of "electric-consuming facility" is "everything that utilizes electric energy from a central station source." KRS 278.010(8). The Commission considered the Conovers' original Petition as a request to modify the certified

electric territorial boundary on the basis that the 95-acre tract itself was to be considered an electric-consuming facility.

It was the Conovers' position that, under the decision in Owen County RECC v. Public Service Commission, Ky. App., 689 S.W.2d 599 (1985), their 95-acre tract qualified to be classified as an electric-consuming facility. As the February 6, 1991 Order noted, there are numerous differences between the 77-acre industrial park which was classified as an electric-consuming facility in Owen County RECC and the Conovers' 95-acre tract. In Owen County RECC, the industrial park was one homogeneous project, developed at one time, and for one use. One industrial tenant was to occupy 47 acres in the park, and there was no permanent electric service to the park when the boundary dispute arose.

This is in stark contrast to the Conovers' 95-acre tract which is to be developed in phases, over time, with some sections dedicated to commercial uses and others dedicated to residential uses. For example, two commercial areas, designated as Commerce Park I and Commerce Park II, have already been developed and are being served by different electric suppliers. Commerce Park I is within KU's service territory, whereas Commerce Park II is within Inter-County's service territory. Although Inter-County is now serving portions of Commerce Park II, the Conovers specifically excluded Commerce Park II from the boundary change requested in this case. Consequently, it would be inconsistent for the Commission to deem the 95-acre tract to be an electric-consuming facility when two different electric utilities are already

serving, and will continue to serve, different commercial parks within the development.

Further, the industrial park at issue in Owen County RECC was to have a common point for the establishment of the electric service entrance, metering and transforming equipment to serve the total park. The Conovers, on the other hand, have suggested that the proposed restaurant site at the eastern end of the development, and a proposed sewer pump station on the northwestern end, be served separately from different points on KU's electric lines. This will result in multiple, rather than common, service entrances, metering, and transforming.

On the basis of the above analysis, the Commission's February 6, 1991 Order found that the Conovers' 95-acre tract was not appropriately classified as an electric-consuming facility. The Conovers' efforts to focus on a proposed restaurant site that will be located in two adjacent certified territories clearly demonstrates that the Conovers do not consider the 95-acre tract itself to be an electric-consuming facility. While the site of the proposed restaurant facility lies within two adjacent certified territories, the Conovers have admitted that the restaurant itself will be exclusively within Inter-County's service territory. In applying the statutory definition of electric-consuming facility, there is no evidence that the site of the proposed restaurant will consume electricity. Rather, it is the restaurant itself that will consume electricity. Consequently, this electric-consuming facility is located solely within Inter-County's territory.

The Commission further recognizes that there may be one or more proposed electric-consuming facilities to be constructed within the 95-acre tract that will be located within two certified territorial boundaries. If that situation arises, and should the affected parties be unable to reach an agreement as provided for in KRS 278.018(6), a petition can be filed pursuant to KRS 278.018(1) for the Commission to determine which electric supplier should serve those particular electric-consuming facilities.

Inter-County's response characterizes the Conovers' 95-acre tract as being analogous to the industrial park at issue in Case No. 9203.¹ In that case, decided subsequent to the Court's decision in Owen County RECC, the Commission declined to find an industrial park to be an electric-consuming facility, stating that,

Each case must stand on its own facts. The fact that land is acquired and then described as an industrial park, which includes a segment that straddles a boundary, will not in and of itself warrant the Commission finding the entire industrial park to be an "electric consuming facility." Were the Commission to apply that sort of test, the potential for abuse by developers exists, thus undermining KRS 278.016, KRS 278.017 and KRS 278.018. Although the Commission has not considered whether that sort of gerrymandering has occurred in this case, as a policy matter, the Commission's actions should limit the potential for abuse.²

¹ Case No. 9203, The Application of Richwood Industrial Development Corporation For Electric Service From The Union Light, Heat and Power Company.

² Id., Order dated August 7, 1985, page 4.

The above-quoted language is just as relevant to this case as it was to Case No. 9203.

The Commission's February 6, 1991 Order addressed only the Conovers' request for a boundary change, pursuant to KRS 278.018(1), based on the grounds that there are electric consuming facilities located within two adjacent certified territories. However, the Commission notes that on rehearing, the Conovers present a new claim that Inter-County is not providing, or proposing to provide, adequate electric service. Specifically, the Conovers allege that their original Petition "discussed the backward, rural methods, safety controls and appearance of Inter-County's wooden poles, street-light limitations and underground service policy," (Application for Rehearing, p. 4-5), and they now request a hearing to ensure that municipal development is not restricted by utilities "ill-equipped to deal with urban service requirements." Id. at 5.

While the original Petition briefly references a desire for street lights on aluminum poles and a concern regarding Inter-County's pricing for underground service, the only relief requested is a modification of the territorial boundary, pursuant to KRS 278.018(1), upon application of the criteria set forth in KRS 278.017(3). Furthermore, the original petition fails to disclose any specific shortcomings of wooden poles or the pricing for underground service. The Conovers have failed to present any factual allegations to support a claim that any rate charged or service offered by Inter-County is in violation of KRS Chapter 278 or the regulations promulgated thereunder. The Commission's

decision in this case is without prejudice to the Conovers' rights, pursuant to KRS 278.018(3) and KRS 278.260, to file a complaint, supported by factual allegations, against Inter-County that any rate is unreasonable or unjustly discriminatory or any service is inadequate. Should such a complaint be filed and proven, the Commission has ample statutory authority to require Inter-County to modify its rates and service practices.

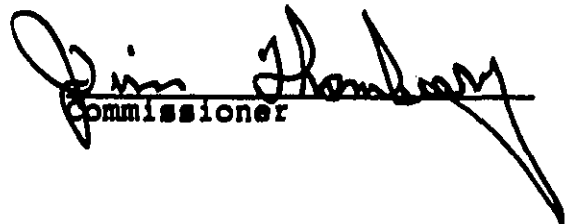
IT IS THEREFORE ORDERED that the Conovers' Application for Rehearing be and it hereby is denied.

Done at Frankfort, Kentucky, this 19th day of March, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director